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Book Reviews

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BOOK REVIEWS

AIRPORTS AND THE COURTS. Charles S. Rhyne. Washington, D. C.: National Institute of Municipal Law Officers, 1944. Pp. viii, 222.

The author of "Civil Aeronautics Act Annotated," co-author of "Airports and Airplanes and the Legal Problems They Create for Cities," as well as writer of much other material on aviation and airport law, has now issued a complete collection and analysis of all reported court decisions involving the acquisition, operation, maintenance and zoning of airports, together with an analysis of Federal, state and local legislation in that field. Also covered therein are matters concerning the air space rights of landowners, aviators and airport operators as exemplified in applicable legislation and legal principles. Designed as a legal handbook for use by those interested in all phases of aviation as well as in the matter of airport expansion such as is bound to follow in the wake of current developments, this book presents a collection of much essential material.

Without airports, there would be no aviation. Cities and others who plan to acquire and operate, or who have acquired and now operate, civil airports are faced with hundreds of legal questions. Answers to many of these questions, through a review of what others have done, are doing, and plan to do in the airport field are here provided. By utilizing the experience here reviewed, aviators, airplane owners, airport owners, and airport operators, both public and private, can avoid the mistakes of the past and build for the future. The book also serves to reveal in a graphic way the growth of law to meet the needs of the coming air age.

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A RATIONALE OF CRIMINAL NEGLIGENCE. Roy Moreland. Lexington, Kentucky: University of Kentucky Press, 1944. Pp. viii, 175.

A monograph on an obscure and confusing segment of criminal law, which has previously appeared in the columns of the Kentucky Law Journal,¹ has now been published in book form. As declared in the preface, the author's purpose was to attempt an analysis of the leading problems in the field of criminal negligence and to draft the various formulae needed to explain the doctrines applicable thereto so as to render the subject intelligible to judges and juries.

¹ 23 Ky. L. Journ., pp. 1, 127 and 221 (1943-4). It is regrettable that the typographical work in the book does not measure up to the standard of accuracy found in the law journal. Compare, for example, the spelling of the word "characteristics" in the subtitle on page 69 of the book with the same word as it appears in 23 Ky. L. Journ. 155. Other comparisons may be found between "defense" (page 79, line 1, of the book; 23 Ky. L. Journ. 165), "advice" (page 84, line 26; 23 Ky. L. Journ. 170); or "attendant" (page 87, line 25; 23 Ky. L. Journ. 173), to cite but a few examples.

That objective has been satisfactorily and adequately covered by not only comparing the standards of the criminal law with those applied in the civil field of tort law but also by supplying constructive criticism of existing statutes as well as proposing model ones.

Perhaps no small part of the difficulty has arisen from trying to fit the question of liability for criminal neglect, whether productive of assault, battery, or homicide, into a pattern which demands that the offender should be punished not alone for his acts or omissions but also for his anti-social state of mind. The opposition existing between the very terms of "negligence" and "intent" has led the courts into declarations which superficially appear to satisfy that arbitrary requirement² but on close analysis thereof such declarations reveal that "intent," in cases involving criminal negligence, is really nothing more than an esoteric term which might well be dispensed with at this time.

A substitute for the concept is necessary, however, so long as the offender is to be punished only if his conduct is productive of more serious consequences than would justify the imposition of tort liability alone. The problem, then, was to devise the definition of a standard which recognizes that the question of fault, whether in criminal or civil law, is essentially the same in kind but different only in degree. A suitable yardstick was found by the author starting with the formula developed in tort law by the American Law Institute³ and by extending the same, without the use of "vivid adjectives,"⁴ to the point where all degrees of admittedly criminal negligence might be measured thereon.

Such proposed standard should be particularly helpful in cases where the jury is both judge of law and fact⁵ for it will enable the members thereof to evaluate the subject in terms within their comprehension and capable of their application. Even in other states, though, the proposed standard should prove of value for it is wide enough to include all the variants which, in a given case, may be determinative factors in deciding guilt from an objective, rather than a subjective, point of view.

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² See, for example, how courts have developed the concept that intention is inferred, presumed, implied, or supplied by negligence: Moreland, *A Rationale of Criminal Negligence*, 37.

³ See Restatement, Torts, Vol. II, §§282-4.

⁴ See Moreland, *op. cit.*, 28, for a criticism of the use of vituperative epithets by courts when endeavoring to explain the higher degree of negligence required in criminal cases.

⁵ It should be noted that the author lists Illinois as such a state, citing Ill. Rev. Stat. 1935, Ch. 38, §764, and *Fisher v. People*, 23 Ill. 218 (1859): Moreland, *op. cit.*, 21, note 84. He fails to notice that such statute was declared unconstitutional in *People v. Bruner*, 343 Ill. 146, 175 N. E. 400 (1931), since which time Illinois juries in criminal cases are limited to being judges only of fact.

THE SELECTION AND TENURE OF JUDGES. Evan Haynes. The National Conference of Judicial Councils, 1944. Pp. xix, 308.

Roscoe Pound, in an introduction to this latest addition to the Judicial Administration Series,¹ declares that too much thought has been given to the matter of getting less qualified judges off of the bench whereas the real remedy lies in not putting them on it. That thought may have been in the minds of many who, in the past, have given attention to the problem of securing for this country an independent, qualified, capable, and intelligent body of jurists. Their writings, being widely scattered, have lacked the emphasis that might have been gained by the concentration thereof in one place. Such emphasis is now provided for the author of this book has made a reasonably full collection of essential data bearing on the technique of judicial selection and tenure, whether taking the form of constitutional or statutory provisions or proposals for the reform thereof.

While much of the book consists of tabular and statistical data, bibliography, etc., several well-written chapters deal with the historical background out of which has evolved the judicial figure of today whether he is to be found in the United States or in other countries. Argument is also advanced to show the wisdom of adopting plans for the retirement of judges rendered disabled by sickness or age, but the author offers no specific proposal for the selection of judges. He intimates, however, that tenure should be substantially for life during good behavior so that the bench might attract men of ability and character who would place prestige and some degree of economic security above private pursuits.

Most startling, though, is the chapter which points an answer to the question as to whether appointed or elected judges are the more liberal. The fear has often been expressed that the former will tend to be undesirably conservative since, not being obliged to seek the favor of the electorate at periodic intervals, they will be out of touch with liberal movements. That fear is not only proven to be erroneous but, in fact, the ultra conservatism that has been demonstrated in certain judicial decisions is shown to mark the attitude of elected courts in most instances. Such point is worthy of more than casual notice for independent men are, by their own independence, the more likely to strike out into new paths in order to improve and advance the law.

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¹ A review of Warren, *Traffic Courts*, part of the same series, appeared in 22 CHICAGO-KENT LAW REVIEW 102.